PUBLIC FILING VERSION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TWENTIETH CENTURY FOX FILM CORP., et al., Plaintiffs, v. CABLEVISION SYSTEMS CORP., et al., Defendants.	:	06 Civ. 3990 (DC)
CABLEVISION SYSTEMS CORP., et al., Counterclaim-Plaintiffs, v. TWENTIETH CENTURY FOX FILM CORP., et al., Counterclaim-Defendants.	:	
THE CARTOON NETWORK LP, LLLP, et al., Plaintiffs, v. CSC HOLDINGS, INC., et al., Defendants.	:	06 Civ. 4092 (DC)
CABLEVISION SYSTEMS CORP., et al., Counterclaim-Plaintiffs, v. THE CARTOON NETWORK LP, LLLP, et al., Counterclaim-Defendants.	:	**DEFENDANTS' RESPONSE TO THE TURNER PLAINTIFFS' THIRD STATEMENT OF MATERIAL FACTS**
CABLEVISION SYSTEMS CORP., et al., Third-Party-Plaintiffs, v. TURNER BROADCASTING SYSTEM, INC., et al., Third-Party-Defendants.	:	

Defendants, counterclaim-plaintiffs, and third-party plaintiffs Cablevision Systems Corporation and CSC Holdings, Inc. (together, "Cablevision") submit this response ("Response") to the Turner Plaintiffs' Statement of Material Facts Pursuant to Local Rule 56.1(a) and this Court's Order of September 6, 2006 ("Statement"). Cablevision incorporates into this Response the facts detailed in the statement of material undisputed facts submitted by Cablevision in support of its own motion for summary judgment, Cablevision's response to the Turner Plaintiffs' Local Rule 56.1 statement submitted with their motion for summary judgment, and Cablevision's response to the Turner Plaintiffs' Additional Statements of Fact submitted in opposition to Cablevision's motion for summary judgment.

PARAGRAPH NO. 1

In an internal Cablevision communication describing the design of the RS-DVR user-interface, J. S. Greenfield, Vice President of the Customer Service Operations Center, said: "[W]e should plan on at least 2 virtual tuners per subscriber, for trial. It would be good for us to design the interface so that we can arbitrarily change the number of tuners in the future (e.g., to 3), and have to make no, or very minor... changes to the [user-interface]". (CSC018406-09 (tab 82) at CSC018406.)

RESPONSE TO PARAGRAPH NO. 1

Cablevision states that the facts contained in paragraph 1 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of facts contained in paragraph 1 of plaintiffs' Statement, and states that the RS-DVR as designed and engineered enables RS-DVR users to make no more than two simultaneous recordings of programming at any time. Declaration of Abigail K. Hemani in Support of Defendants' Response to the Turner Plaintiffs' Third Statement of Material Facts ("Third Hemani Decl."), Ex. A, Deposition of Stephanie Mitchko ("Mitchko Dep."), dated July 12, 2006, at 268:5-8, 268:20-25. Cablevision further states that it has no plan for advanced phases or enhanced functionality of the RS-DVR beyond the initial customer roll-out following the scheduled June 2006 trial. Third Hemani Decl., Ex. B, Deposition of Patricia Gottesman ("Gottesman Dep."), dated August 1, 2006, at 83:23-84:4, 85:3-19.

PARAGRAPH NO. 2

In a March 2006 internal Cablevision document that describes "the functionality [that] will be incorporated into the planned Remote Server DVR solution", Cablevision included in a list of "Future Feature Enhancements" the ability to "[a]llow more than 2 simultaneous records". (CSC003516-19 (tab 83) at CSC003518.)

RESPONSE TO PARAGRAPH NO. 2

Cablevision states that the facts contained in paragraph 2 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of facts contained in paragraph 2 of plaintiffs' Statement, and states that the RS-DVR as designed and engineered enables RS-DVR users to make no more than two simultaneous recordings of programming at any time. Third Hemani Decl., Ex. A, Mitchko Dep. at 268:5-8, 268:20-25. Cablevision further states that it has no plan for advanced phases or enhanced functionality of the RS-DVR beyond the initial customer roll-out following the scheduled June 2006 trial. Third Hemani Decl., Ex. B, Gottesman Dep. at 83:23-84:4, 85:3-19.

PARAGRAPH NO. 3

In a May 22, 2006 internal Cablevision document that outlines assumptions for modeling the RS-DVR Service, Cablevision included under a heading entitled "Enhancements to improve take rate", the following item: "[a]llow for double the amount of simultaneous records in relation to [the Scientific Atlanta] DVR". (CSC003049-50 (tab 84) at CSC003049-50.)

RESPONSE TO PARAGRAPH NO. 3

Cablevision states that the facts contained in paragraph 3 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of facts contained in paragraph 3 of plaintiffs' Statement, and states that the RS-DVR as designed and engineered enables RS-DVR users to make no more than two simultaneous recordings of programming at any time. Third Hemani Decl., Ex. A, Mitchko Dep. at 268:5-8, 268:20-25. Cablevision further states that it has no plan for advanced phases or enhanced functionality of the RS-DVR beyond the initial customer roll-out following the scheduled June 2006 trial. Third Hemani Decl., Ex. B, Gottesman Dep. at 83:23-84:4, 85:3-19.

PARAGRAPH NO. 4

REDACTED

RESPONSE TO PARAGRAPH NO. 4

REDACTED

PARAGRAPH NO. 5

REDACTED

RESPONSE TO PARAGRAPH NO. 5

REDACTED

DEFENDANTS' LOCAL RULE 56.1(b) STATEMENT OF ADDITIONAL MATERIAL FACTS IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

In accordance with Rule 56.1 of the Local Civil Rules of the United States District Court for the Southern District of New York, defendants, counterclaim-plaintiffs, and third-party plaintiffs Cablevision Systems Corp. and CSC Holdings, Inc. (together, "Cablevision") submit this statement of additional material facts as to which there is no genuine dispute in support of their opposition to plaintiffs' motions for summary judgment.

1. The RS-DVR will enable customers with non-DVR digital cable boxes to record the same television programming as Cablevision customers who have the SA 8300 box. Third Hemani Decl., Ex. B, Gottesman Dep. at 228:22-229:6.

2. **REDACTED**

3. All storage space allocated to a specific user in the Arroyo server of the RS-DVR is stored on a single physical drive. Third Hemani Decl., Ex. F, Deposition of Kirk Blattman, dated August 11, 2006, at 109:17-110:8; Third Hemani Decl., Ex. E, Horowitz Rebuttal Report ¶ 9.

4. **REDACTED**

5. The terms "network DVR" (nDVR) and "network PVR" (nPVR) do not have a standard industry definition, and are used loosely by different people to refer to different systems and technologies. Third Hemani Decl., Ex. G, Deposition of Glenn Reitmeier, dated September 5, 2006, at 168:7-10, 171:22-172:5; Third Hemani Decl., Ex. B, Gottesman Dep. at 35:4-17, 37:7-8.

DESIGNATION OF MATERIALS FOR THE PURPOSE OF RECORD COMPLETENESS

Pursuant to Fed. R. Civ. P. 56(e) and Fed. R. Evid. 106, Cablevision offers the following documents as explanation, clarification, and/or context for those materials cited by the parties in their cross-motions for summary judgment and corresponding Local Civil Rule 56.1 statements of material fact.

1. Third Hemani Declaration, Ex. H, BigBand Networks System Specifications, BMR, V. 2.11, Bates-numbered Arroyo 002387 – Arroyo 002500.

Dated: October 20, 2006
Boston, Massachusetts

Respectfully submitted,

Cablevision Systems Corporation, Inc. and
CSC Holdings, Inc.

By their attorneys,

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